

Approved: Emily Deininger
 EMILY DEININGER
 Assistant United States Attorney

Before: HONORABLE LISA MARGARET SMITH,
 United States Magistrate Judge
 Southern District of New York

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	:	
UNITED STATES OF AMERICA	:	<u>COMPLAINT</u>
	:	
- v. -	:	Violation of 8 U.S.C.
	:	§ 1326(a) & (b)(1)
EDGARDO LENIN PONCE MONTOYA,	:	
a/k/a "Edgardo Lenin Ponce-	:	
Montoya,"	:	COUNTY OF OFFENSE:
a/k/a "Edgardo Ponce-Montoya,"	:	ORANGE
	:	
Defendant.	:	
	:	
- - - - -	X	

SOUTHERN DISTRICT OF NEW YORK, ss.:

ERIK ANDREN, being duly sworn, deposes and says that he is a Deportation Officer with the United States Department of Homeland Security, Immigration and Customs Enforcement ("ICE"), and charges as follows:

COUNT ONE
 (Illegal Reentry)

1. In or about June 2018, in the Southern District of New York and elsewhere, EDGARDO LENIN PONCE MONTOYA, a/k/a "Edgardo Lenin Ponce-Montoya," a/k/a "Edgardo Ponce-Montoya," the defendant, being an alien, unlawfully did enter and was found in the United States, after having been removed from the United States, subsequent to a conviction for the commission of a felony, without having obtained the express consent of the Attorney General of the United States or his successor, the Secretary for the Department of Homeland Security, to reapply for admission.

(Title 8, United States Code, Sections 1326(a) & (b)(1).)

The bases for my knowledge and the foregoing charge are, in part, as follows:

2. I am a Deportation Officer with ICE, and I have been personally involved in the investigation of this matter. This affidavit is based in part upon my conversations with law enforcement agents and others and my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

3. From my review of ICE records regarding EDGARDO LENIN PONCE MONTOYA, a/k/a "Edgardo Lenin Ponce-Montoya," a/k/a "Edgardo Ponce-Montoya," the defendant, I have learned, among other things, the following:

a. PONCE MONTOYA is a native and citizen of Honduras and is not and has never been a citizen of the United States.

b. On or about April 19, 1992, PONCE MONTOYA entered the United States without inspection.

c. On or about December 2, 1998, an Immigration Judge ordered PONCE MONTOYA deported to Honduras pursuant to Section 241(a)(1)(B) of the Immigration and Natonality Act (the "1998 Order").

d. On or about May 21, 1999, PONCE MONTOYA was served with a Warning to Alien Ordered Removed or Deported stating, among other things, that he was prohibited from entering, attempting to enter, or being in the United States. A fingerprint impression was taken of PONCE MONTOYA by the United States Immigration and Naturalization Services ("INS") in connection with the 1999 Warning.

e. On or about June 16, 1999, PONCE MONTOYA was removed from the United States pursuant to the 1998 Order (the "1999 Removal"). A fingerprint impression was taken of PONCE MONTOYA by the INS in connection with the 1999 Removal.

f. In or about December 1999, PONCE MONTOYA re-entered the United States.

g. On or about June 24, 2000, the INS served PONCE MONTOYA with a Warning to Alien Ordered Removed or Deported

informing him, among other things, that he was prohibited from entering, attempting to enter, or being in the United States (the "2000 Warning"). A fingerprint impression was taken of PONCE MONTOYA by the INS in connection with the 2000 Warning.

h. On or about July 28, 2000, PONCE MONTOYA was removed from the United States pursuant to the reinstated 1998 Order (the "2000 Removal"). A fingerprint impression was taken of PONCE MONTOYA by the INS in connection with the 2000 Removal.

i. On or about February 5, 2003, PONCE MONTOYA re-entered the United States.

j. On or about September 16, 2004, PONCE MONTOYA was removed from the United States pursuant to the 1998 Order (the "2004 Removal"). A fingerprint impression was taken of PONCE MONTOYA by the INS in connection with the 2004 Removal.

k. On or before December 9, 2011, PONCE MONTOYA was again found in the United States.

l. On or about February 25, 2014, PONCE MONTOYA was removed from the United States pursuant to the reinstated 1998 Order (the "2014 Removal"). A fingerprint impression was taken of PONCE MONTOYA by the INS in connection with the 2014 Removal.

4. Based on my review of records from the United States District Court for the Southern District of Texas and the United States District Court for the Southern District of New York, I have learned, among other things, the following:

a. On or about March 17, 2003, EDGARDO LENIN PONCE MONTOYA, a/k/a "Edgardo Lenin Ponce-Montoya," a/k/a "Edgardo Ponce-Montoya," the defendant, was arrested by the U.S. Border Patrol ("2003 Arrest"). A fingerprint impression was taken of PONCE MONTOYA in connection with the 2003 Arrest. On or about March 16, 2004, PONCE MONTOYA was convicted in the U.S. District Court for the Southern District of Texas of illegal reentry, in violation of Title 8, United States Code, Section 1326, and sentenced principally to 16 months' imprisonment.

b. On or about July 30, 2012, PONCE MONTOYA was convicted in the U.S. District Court for the Southern District of New York of illegal reentry, in violation of Title 8, United States Code, Sections 1326(a) and (b)(1), and sentenced principally to 27 months' imprisonment.

5. Based on my review of a criminal history records for EDGARDO LENIN PONCE MONTOYA, a/k/a "Edgardo Lenin Ponce-Montoya," a/k/a "Edgardo Ponce-Montoya," the defendant, I know, among other things, the following:

a. On or about October 9, 1996, PONCE MONTOYA was convicted of Attempted Reckless Endangerment in the First Degree, in violation of New York Penal Law Section 120.25, a Class E felony, and sentenced to 5 years' probation.

b. On or about July 16, 1997, PONCE MONTOYA was convicted of Driving While Intoxicated, in violation of New York Vehicle and Traffic Law Section 1192, a Class E felony, and sentenced to one to three years' imprisonment.

c. On or about September 6, 2012, PONCE MONTOYA was convicted of Driving While Intoxicated, in violation of New York Vehicle and Traffic Law Section 1192, a Class E felony, and conditionally discharged.

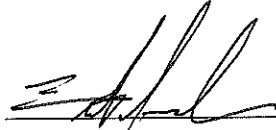
6. Based on my involvement in this investigation and my conversations with other law enforcement officers, I know that, on or about June 19, 2018, EDGARDO LENIN PONCE MONTOYA, a/k/a "Edgardo Lenin Ponce-Montoya," a/k/a "Edgardo Ponce-Montoya," the defendant, was arrested by the Newburgh City Police in Newburgh, New York on an outstanding warrant. The next day, PONCE MONTOYA was arrested at the Orange County Jail in Goshen, New York by ICE agents ("2018 Arrest"). Fingerprint impressions were taken in connection with the 2018 Arrest.

7. Based on my review of reports prepared by a trained fingerprint examiner employed by ICE, I know that the fingerprint impressions taken in connection with the 1999 Warning, 1999 Removal, 2000 Warning, 2000 Removal, 2004 Removal, 2014 Removal, and the 2018 Arrest were linked to one and the same person, EDGARDO LENIN PONCE MONTOYA, a/k/a "Edgardo Lenin Ponce-Montoya," a/k/a "Edgardo Ponce-Montoya," the defendant. In addition, I know that the fingerprint impressions taken in connection with the 2003 Arrest and the 2004 Removal were also linked to the one and the same person, PONCE MONTOYA.

8. Based on my participation in this investigation, I know that a search of all relevant Department of Homeland Security indices has confirmed that, following his removal from the United States on or about February 25, 2014, EDGARDO LENIN PONCE MONTOYA, a/k/a "Edgardo Lenin Ponce-Montoya," a/k/a "Edgardo Ponce-Montoya," the defendant, never obtained the express consent of the Attorney

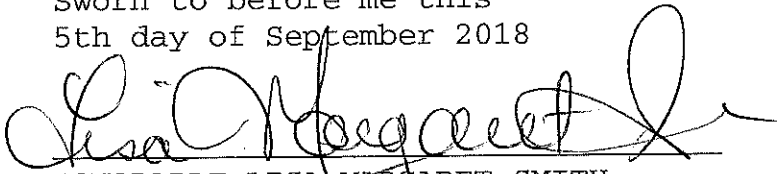
General of the United States, or the Secretary for the Department of Homeland Security, to reapply for admission to the United States.

WHEREFORE I respectfully request that a warrant be issued for the arrest of EDGURADO LENIN PONCE MONTOYA, a/k/a "Edgardo Lenin Ponce-Montoya," a/k/a "Edgardo Ponce-Montoya," the defendant, and that he be arrested, and imprisoned or bailed, as the case may be.



ERIK ANDREN
Deportation Officer
Immigration and Customs Enforcement

Sworn to before me this
5th day of September 2018



HONORABLE LISA MARGARET SMITH
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK